

AGREEMENT FOR THE USE OF CITY PARK

THIS AGREEMENT is entered into this _____ day of _____, 2009, by and between Granger South National Youth Baseball Association, a Utah non-profit corporation, (hereinafter the "Association"), and West Valley City, a Utah municipal corporation of the State of Utah, (hereinafter the "City").

WITNESSETH :

WHEREAS, the Association needs space to practice and play baseball; and

WHEREAS, the Association desires to practice and play baseball at City Park (hereinafter the "Park") located at approximately 4400 West 3500 South, West Valley City, Utah; and

WHEREAS, the City and the Association desire to enter into this Agreement for the use of the Park by the Association; and

NOW, THEREFORE, based on the foregoing and subject to the terms and conditions contained herein, the parties agree as follows:

AGREEMENTS :

1. **Term.** This Agreement shall extend for a period of one (1) baseball season, subject to the renewal and termination provisions set forth in Section 16 of this Agreement. As used in this Agreement, the term "baseball season" (hereinafter the "Season") shall mean that period of time from March 10, 2009 through June 30, 2009 of each calendar year.
2. **Grant of Use.** During any Season in which this Agreement is in effect, the City hereby grants to the Association the use of the 4-plex Baseball Fields (which includes the four contiguous baseball fields, adjoining outfields, fences, and warm-up areas), portions of the score building used for restrooms, and the area normally used for vending (together herein the "Building"). No other areas of the Park are authorized for use by the Association for league related play or practices under this Agreement.

The Season of any given calendar year may be extended upon written approval by the City, which approval must be requested by the Association. Such extension may be requested in the event Association hosts an "all-star" or other championship tournament. During all non-Season periods of a year, the City shall retain all of its rights to the full control and use of the Park and Building, including the right to lease to other entities.

Use Revenue. The Association hereby agrees that in consideration of the City's granting it the use of the Park and Building, the Association agrees to provide the

City a schedule of its practices and games prior to using the fields and pay all the fees according to rates established by the Parks and Recreation Department for City Recreational facilities. The Association may have the fees reduced, credited, or eliminated through pre-approved services such as work projects, including improvements to the Park or Building. A pre-approved service or work project must be agreed upon before the season starts or the established fee for the year will be \$5.00 per participant and be payable to the City when registration is completed. The Association recognizes the City's responsibility to provide recreation to the public. Therefore, the City may open and operate or allow the opening and operating of the Building during the Season on an as-needed basis, provided that it does not interfere with the Association's use of the Park. The Association shall obtain, as required by law, all state and local licenses and permits necessary to operate the snack bar and Building and shall comply with all applicable laws, ordinances, and regulations.

3. **Nonprofit Status.** The Association hereby represents and covenants that it has been and will continue to be a nonprofit organization in good standing under the laws of the State of Utah. The Association shall provide proof, satisfactory to the City, of such status, concurrent with the execution of this Agreement and at any other time upon request of the City.
4. **Maintenance.** The Association agrees that during the Season the Association shall maintain and keep in good repair the Park and Building. Such maintenance shall include, but is not limited to, litter pickup, turf repair, field repair, field marking, fence repairs, sprinkler repairs, painting, custodial duties, plumbing, electrical, and security. The City agrees that it shall provide lawn mowing and watering of the Park and shall be responsible for the payment of water and garbage collection costs. The Association agrees that it shall schedule its activities in conjunction with the City's maintenance program by allowing a daily maintenance period from 7 a.m. to 2 p.m., Monday through Friday. The Association agrees that the City may close the Park for any reason deemed necessary by the City. The Association also agrees that the use of both the park and score building fountains and restrooms are limited due to seasonal changes and must be closed for the winter to eliminate damage from freezing. If water is shut off because of weather, the Association must make other arrangements for sanitary services.
5. **Work Projects.** The Association and the City may work together to perform work projects and improvements to the Park and Building. The Association and the City may provide materials and labor upon mutual agreement.
6. **Playing Condition.** The City shall render the Park and Building to playable condition prior to the start of the Season. The Association shall surrender the Park and Building to the City in good condition at the end of each Season.

7. **Insurance.** The Association shall maintain the insurance as set forth in Exhibit A to this Agreement, which Exhibit is incorporated herein by this reference. No practice, league, or tournament play at the Park shall be allowed until such insurance is in place and the Association has provided copies of the required policies, including applicable endorsements, to the City.
9. **Indemnification by Association.** To the fullest extent permitted by law, the Association shall indemnify, hold harmless, and, at the City's option, defend the City from and against all claims, damages, losses, and expenses, including, but not limited to, attorney's fees or other liability, for death or injury to any person or damage to property caused, or alleged to have been caused, directly or indirectly, or arising from any willful or negligent act or omission of the Association, including its agents, its employees, volunteers, independent contractors, concessionaires, and also including spectators and players in connection with the Association's use of City property under this Agreement. Employees of the City attending Association performances shall be considered members of the general public.
10. **Indemnification by City.** To the fullest extent permitted by law, the City shall indemnify, hold harmless, and, at the Association's option, defend the Association, from and against all claims, causes of action, lawsuits, losses, liability, costs, expenses, damages, and judgment, including, but not limited to, attorney's fees or other liability, that are brought, caused, alleged to arise, or obtained for death or injury to any person or property caused or arising from any willful or grossly negligent acts or omissions of the City, including its agents or employees.
11. **Association Equipment.** The Association assumes full responsibility for equipment brought or used by it, and for the acts and conduct employees, performers, spectators, players or with the Association.
12. **Not Agents of the City.** The Association agrees that its agents, employees, assigns or volunteers involved in the preparation for, or presentation of, any Association event shall not be considered employees or agents of the City for industrial insurance purposes. The Association further agrees that in the event of a claim for industrial benefits against the City made by one of the Association's agents, employees, assigns or volunteers, it shall indemnify, defend, and hold harmless the City from any and all damages payable by the City as an employer under the Utah Workers' Compensation Insurance Act.
14. **Association Improvements.** Any improvements, changes, or projects the Association may desire to install and/or perform on the Park property shall be subject to review and approval by the City prior to any such installation, and shall become the property of the City. This provision shall apply to fixed structure improvements only.

15. **Subleasing.** The Association may not sublease the Park to other nonprofit groups or Associations during any Season during the term of this Agreement.
16. **Renewal and Termination.** This agreement shall automatically renew each Season for a period of two Seasons, unless terminated by either party as set forth in this section. Either party may terminate this agreement without cause upon written notice. The agreement shall renew for the next upcoming Season on July 1 of each year, unless written notice of termination is delivered to the other party prior to July 1.
17. **Notice.** Any notice to be given by either of the parties to this Agreement shall be given as follows:

To the City:

Attn: Parks and Recreation Director or Designee
West Valley City
3600 South Constitution Boulevard
West Valley City, Utah 84119-3720

To Association:

Attn: Dan Peterson, President
Granger South National Youth Baseball Association
3836 South 3760 West
West Valley City, UT 84120
Mobile Phone: (801)910-4438

It shall be the responsibility of the parties to notify one another of the change of any person or position to who notice is to be sent.

18. **Governing Law.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah.
19. **Attorney's Fees.** If any action is brought to enforce or interpret any provision of this Agreement, the prevailing party in such action shall be entitled to recover from the other party reasonable attorney's fees and court costs incurred in connection therewith, the amount of which shall be fixed by a court of competent jurisdiction and shall be made a part of any judgment rendered.
20. **Entire Agreement.** This Agreement, together with attachments hereto, contains the entire agreement between the parties, and no statements, promises, or inducements made by a party shall be binding or valid unless in writing, and this Agreement may not be enlarged, modified, or altered, except in writing signed by the parties.

Exhibit "A"

USE OF CITY PARK

- A. The Association shall maintain at its own expense, public liability insurance against claims for bodily injury, personal injury, or death or damage to property occurring upon, in, or about the Park in a minimum amount of Two Million Dollars (\$2,000,000) combined single limit per occurrence, and not less than Two Million Dollars (\$2,000,000) in the aggregate. The general aggregate limit shall apply separately to this Agreement (or activities to be performed pursuant to this Agreement), or the general aggregate limit shall be two (2) times the required occurrence limit. The coverage shall be in the nature of Broad Form Commercial General Liability coverage and shall specifically include, at minimum, the following types of coverage; (i) Premises - Operation; (ii) Product - Completed Operations Hazard; (iii) Broad Form Contractual Insurance; (iv) Broad Form Property Damage; and (vii) Personal Injury.
- B. The Association shall maintain, as approved by the City Attorney, automobile liability insurance against claims for death, bodily injury, personal injury, and property damage in a minimum amount of Two Million Dollars (\$2,000,000) combined single limit per occurrence and shall specifically include, at minimum, the following types of coverage: (i) Owned automobiles; (ii) Hired automobiles; and (iii) Non-owned automobiles.
- C. All insurance policies required under this section shall;
 - (1) State that the Association's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (2) Be issued by insurers of recognized responsibility, licensed or permitted to do business in the State of Utah, except as otherwise provided in the Master Lease. Insurance is to be placed with insurers with an AM Best rating of no less than an A- Carrier, with a rating of VII or higher.
 - (3) Provide that the coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, or otherwise materially altered, without at least thirty (30) days' prior written notice by certified mail, return receipt requested, to both the City and the Association. Certificates evidencing such policies shall be deposited with the City together with appropriate evidence of payment of the premiums therefore.
- D. All public liability and automobile liability policies maintained under this section shall include the City, its employees, officers, officials, agents, volunteers, and assigns as additional insured. Any reference to the City, either in the provisions of this section or in any policies provided pursuant to this Agreement, shall be deemed to include the City, its employees, officers, officials, agents, volunteers, and assigns.

- E. The coverage provided by the insurance policies maintained under this section shall be primary insurance with respect to the City, its employees, officers, officials, agents, volunteers, and assigns. Any insurance or self-insurance maintained by the City, its employees, officers, officials, agents, volunteers, and assigns shall be in excess of the Association's insurance and shall not contribute to or with it. Accordingly, underwriters shall have no right of recovery or subrogation against the City, it being the intent of the parties that the insurance policies maintained under this section shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
- F. The insurance companies issuing the policy or policies shall have no recourse against the City for payment of any premiums due or for any assessments under any form of any policy.
- G. Any failure to comply with the reporting provisions of any insurance policy maintained under this section shall not affect coverage provided to the City, its employees, officers, officials, volunteers, and assigns.
- H. Any deductibles in any insurance policies maintained under this section shall be declared to and approved by the City. At the option of the City, the insurer shall reduce or eliminate such deductibles as respects the City, its employees, officers, agents, volunteers, and assigns, or the Association shall procure a bond, in a form acceptable to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.